

THIS DISPOSITION IS
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OF THE TTAB

Mailed: June 22, 2004

Hearing:
April 8, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bay Gulf Credit Union

Serial No. 76386638

Theodore A. Breiner of Breiner & Breiner, L.L.C. for Bay Gulf Credit Union.

Ingrid C. Eulin, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

Before Hohein, Chapman and Bottorff, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Applicant, Bay Gulf Credit Union (a Florida state-chartered credit union), seeks to register on the Principal Register the mark BAYLOC for services identified, as amended, as "financial services, namely loan financing."

The application, filed on March 22, 2002, was based on Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a), with a claimed date of first use and first use in commerce of March 11, 2002.

The Examining Attorney refused registration under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052, 1053 and 1127, on the basis that the proposed mark does not function as a service mark as evidenced by the specimen of record. In response thereto, applicant argued that its use of the mark as shown on the specimen was proper service mark use, and applicant also submitted an additional specimen showing use of the mark BAYLOC.

The Examining Attorney made final the refusal to register that the proposed mark, as used on the specimens of record, does not function as a service mark.

Applicant appealed to the Board. Briefs have been filed, and an oral hearing was held on April 8, 2004.

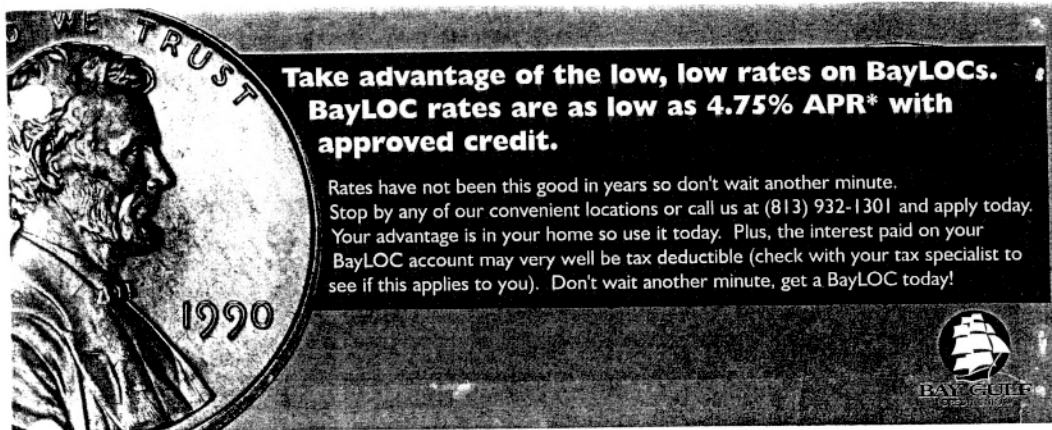
The Examining Attorney's position is essentially that the proposed mark is buried in the text of applicant's advertisement specimens; that the term functions only as advertising copy or text; that it does not appear alone in the advertisements (i.e., it is always part of a longer sentence or phrase); and that therefore it does not function as a service mark to identify and distinguish applicant's identified services from those of others.

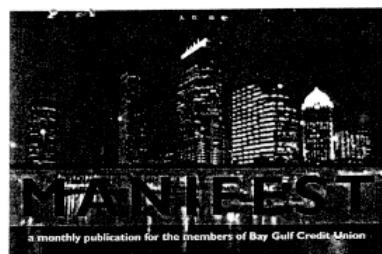
Applicant essentially contends that the mark is prominently displayed (several times) in both of the advertisement specimens; that it is used in a manner that

makes a commercial impression separate from the other elements of the advertisements; and that prospective purchasers will recognize BAYLOC as a source identifier for applicant's loan financing services.

The question of whether the proposed mark in an application for registration functions as a service mark is determined by examining the specimens of record. (The Board also considers any other relevant material submitted during the prosecution of the application, but no other material was submitted in this case.)

The front sides of each of applicant's two specimens of record are reproduced below:





Paying More Than 4.75% on ANYTHING?

Why?

BayLOC (Bay Gulf's home equity line of credit) is now available at a rate as low as the current prime rate. Prime rate as of February 20, 2002 is 4.75% APR*! Even better, in most circumstances, the interest that you pay on your BayLOC account is tax deductible (check with your tax specialist to make sure that this applies to you).

BayLOC accounts are available on your primary residence and we will lend up to 100% of the available equity (equity is calculated as the current market value of your residence MINUS any existing first mortgage balance). Your credit line is available for your use at any time over the next five years. Simply write out one of the special checks created with your account, use the VISA card issued with the account or contact us to advance on your BayLOC.

Best of all, your monthly payment is only 1.5% of the outstanding balance or \$100, whichever is greater.

Use your BayLOC for a wide range of purposes

- payoff some bills • put in a pool • college • remodel the kitchen
- buy a new car • travel • heck, maybe you can even buy Buccaneer season tickets now!

Stop into any of our convenient branch locations or call us at (813) 932-1301 to apply for your BayLOC. Within a couple of weeks you could be saving money, watching people dig a hole in your backyard or preparing for tailgate parties this fall!



*Annual Percentage Rate, BayLOC, is a variable rate product. Certain restrictions apply. Offer is valid with approved credit. Rates and terms are subject to change at any time.

Manifest

*Manifest is to show
plainly; reveal in;
an itemized list of cargo.*

CheckMate is Here!

Effective immediately, Bay Gulf Credit Union will begin clearing checks under the CheckMate program that can keep you from having checks returned even when you don't have the funds available in your account.

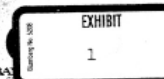
Here is how it works - if you write a check and the funds are not currently available in your account, we will automatically check to see if an overdraft can be done from either your designated savings account or your line of credit. If the funds are not available to overdraft and you are eligible for the CheckMate program, we will still clear your check subject to certain conditions.

A returned check can cost you in excess of \$60 because of the fees that the merchant and Bay Gulf charge. CheckMate allows you to avoid any charges that might be assessed by the merchant AND the potential embarrassment of having the merchant contact you to make the check good. We simply charge you \$35 and we pay the check - no charges from the merchant and no hassle!

To qualify for CheckMate, you must have the following:

- Share draft account at Bay Gulf CU in good standing
 - Share draft account has been open for a minimum of 60 days
 - Minimum direct deposit to your account at Bay Gulf CU
 - All Bay Gulf CU loan accounts must be current
- If you meet these qualifications, you have CheckMate automatically.

Please also be aware that the maximum amount that we will cover to make the checks good is \$1,000. Account can only be negative for a maximum of 10 calendar days.



MARCH 2002

Use of a designation to convey advertising information, rather than to identify and indicate the source of the services, is not service mark use. See TMEP §1301.02(a) (3d ed. 2002), and cases cited therein. The determination of whether an asserted mark functions as a service mark depends upon how it is used and how potential purchasers will perceive it. See *In re Information Builders Inc.*, 213 USPQ 593 (TTAB 1982).

Upon careful consideration of this record and the arguments of the attorneys, we are persuaded that the proposed mark BAYLOC functions as a service mark and would be so perceived by purchasers. The word "BAYLOC" appears in mostly capital letters. The text portion of both specimens discusses that applicant's BAYLOC loan or account is its home equity line of credit, and both advertisements also discuss the merits of applicant's particular BAYLOC home equity loans. While it is true that the word does not appear by itself on a separate line in the advertisement, nonetheless, we find that applicant's use of the term BAYLOC creates a separate commercial impression from the advertising copy and would be so perceived by purchasers. That is, applicant's use of "BAYLOC" in the specimens is use in the manner of a service mark, and is not merely advertising text.

Further, although other marks appear on the full-page advertisement (e.g., BAY GULF, CHECKMATE, and MANIFEST), we do not agree with the Examining Attorney that the term BAYLOC "blends so well with other matter that it is difficult or impossible to discern which element is supposed be the service mark." (Brief, pp. 5-6.) In any event, the smaller advertisement includes only the mark BAYLOC and applicant's BAY GULF and logo mark.

We find, therefore, that the specimens of record support use of the mark BAYLOC as a service mark for loan financing services. See *In re Safariland Hunting Corp.*, 24 USPQ2d 1380 (TTAB 1992); *In re Post Properties, Inc.*, 227 USPQ 334 (TTAB 1985); and *In re First Union National Bank*, 223 USPQ 278 (TTAB 1984). Cf. *In re C.R. Anthony Co.*, 3 USPQ2d 1894 (TTAB 1987); *In re The Signal Companies, Inc.*, 228 USPQ 956 (TTAB 1986); and *In re McDonald's Corp.*, 229 USPQ 555 (TTAB 1985).

Decision: The refusal to register under Sections 1, 2, 3 and 45 of the Trademark Act on the basis that the mark does not function as a service mark is reversed.